THE HON'BLE SRI JUSTICE C.V. RAMULU

Tuesday, 12th September, 2006

W.P.No.17658 of 2004

Between:

M/s. Ankur Seeds Pvt.Ltd., having its
Regd. Office at 27, Cotton Market Layout,
Nagpur and the local Office at
203, III Floor, Vipanchi Estate,
Hyderguda, Hyderabad, rep. by
Sri M. Vaman Rao … Petitioner

and

The Secretary to Government,
Government of Andhra Pradesh,
Food & Agriculture Department,
Secretariat, Hyderabad & others … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.15830 of 2002

ORAL ORDER:

This Writ Petition is filed seeking a Mandamus to declare the Proceedings in Lr.No.D1/2159/2001, dated 13-2-2002 and the Proceedings No.SfHVP(c)3524/98, 2-5-2002 of respondents 3 and 2 respectively as arbitrary and illegal and consequently to declare the same as unenforceable.

It is the case of the petitioner that it has been engaged in sale and supply of seeds and dealing with wide range of products in field, fibre and vegetable crops. Majority of these crops belong to proprietory breed hybrids and varieties. Its research and development work was recognized by the D.S.I.R., Government of India in 1992-93. The object of the Research and Development unit was to produce quality high yield and economical hybrid varieties for farmers need. The company bagged the National award for excellent Research and Development achievements in the year 1996. The major share in the vegetable seeds is Hy-Chilly ARCH 228, as this product was accepted by the farmers. It regularly conducts rigorous tests of the products, such as, GOT Emergence and Germination test etc., before releasing the product into the market. For acceptance of product, primarily, it conducts demonstrations and trials in the market. After assessing the product performance, it markets the product. In this case also i.e. ARCH 228, it has done the above and has gone through all the

phases before releasing it for commercial marketing. The said ARCH 228 has been in the market for the last more than five years and it occupies a major share in the market. The said seeds, including quality and other factors, are governed by the Seeds Act,1966 enacted by the Parliament under Entry 33 of the concurrent list and the State Government has hardly any role to play. However, the State of Andhra Pradesh proposed that all seed producers, who are carrying on the business in the State should enter into a Memorandum of Understanding (MOU) whereby the seed producers allowed to certify their own seeds as per the prescribed standards and made the seed producers accountable under the Seeds Act. For the said purpose and to monitor, the State Government proposed to appoint State Level Monitoring Committee (2nd respondent herein). As per clause 1(8) of MOU, the State Level Monitoring Committee was constituted to assess the seed requirements and advise the Agricultural Universities to produce the required quantities of listed seeds of notified varieties. MOU also envisages formation of District Level Committees (3rd respondent herein), vide para 3(1). The objects of the MOU was to provide a mechanism for the farmers for redressal of their grievances regarding the quality of seeds and the District Level Committees formed for that purpose were authorized to receive complaints from the aggrieved farmers and after due inspection of the seeds, report their observations. The District Level Committees were also empowered to award compensation. Under clause 5 of the MOU, the seed producer was provided with an appellate remedy to the authority nominated by the State Government. As the State Government has not nominated any authority, the State Level Committee is entertaining the appeals from the seed producers as an appellate authority over the District Level Committee.

While so, on 18-12-2001, the petitioner received a letter from the 3rd respondent-Joint Director, Agriculture, Khammam informing it that some complaints have been received from the farmers, inspection of the fields of the said farmers was proposed to be conducted on 28-12-2001 and the farmers of Venkatapuram complained that there is no flowering and fruiting of ARCH 228 and 83 supplied by the petitioner. It appears that even prior to the letter dated 18-12-2001, on the complaints of 19 farmers, their respective fields were inspected by the Seed Inspector/Local Agricultural Officer in November,2001 itself and submitted a report. After the letter of the Joint Director dated 18-12-2001, the 3rd respondent inspected the fields of some of the 19 farmers, in the presence of the representative of the petitioner, the Assistant Director of Agriculture, Khammam, the Farmers' representative and Dr. Jagan Mohan Rao, the representative of Madhira Research Station. The said persons only inspected the fields and gave a report. Based on the said report, the Joint Director of Agriculture sent a communication dated 13-2-2002 assessing the compensation at Rs.13,87,000/- payable by the petitioner to the 19 farmers. The petitioner was surprised to note the said conclusion and when they have verified the observations in the reports, with respect to each of the 19 farmers, it was found that neither the said report nor the said observations have any legal validity whatsoever. However, as the petitioner had no choice, it filed an appeal before the 2nd respondent. The said appeal was initially heard by the 2nd respondent and on the basis of the contentions raised by the petitioner regarding invalidity and arbitrariness of the conclusions of the 3rd respondent, the 2nd respondent directed the 3rd respondent to visit some of the areas in Venkatapuram and Cherla Mandals on 24-4-2002 to ascertain the

facts regarding non-observance of off-types in the fields of the lots in question claimed by the petitioner. Accordingly, some other fields where same seed from the same lot number was sowed in the villages adjacent to Venkatapuram were inspected by the Assistant Director of Agriculture and submitted his report dated 23-4-2002. After receipt of the said report, the 2nd respondent re-examined the appeal and found that there is admixture of different seeds planted by the said 19 farmers in question on the ground that there is some genetic variation and proceeded to conclude that there is impurity in the genetic percentage of the seeds. However, the appellate authority reduced the compensation amount considerably and fixed the liability of the petitioner at Rs.4,23,300/-.

A detailed counter affidavit has been filed by the 2nd respondent denying the allegations made by the petitioner and asserting that since the breeder of the petitioner has already signed in Part B of the investigation report, which itself is a proof of having accepted the findings of the District Level team, another report of the breeder cannot be accepted at a later date. The contention of the petitioner that the compensation was awarded without any basis is not correct for the reason that while awarding the compensation to the farmers, the 2nd respondent has taken the following factors into consideration.

Yield potential of chilli ARCH-228 as claimed by the petitioner at the time of entering MOU on 30-4-2001	Green chilli 412-425 qtls/ hect. or dry chilli (103 to 106.25 qtls or hect) (or)
Average yield of hybrid chillies claimed by the farmers in Venkatapuram Mandal.	41.2 to 42.5 qtls/acre 20 qtls/acre
Average yield of chilli (Dry) in Khammam District (2000-2001)	2992 Kgs/hect or (dry) 11.96 qtls/acre

It is also stated that the basis for arriving at the yield loss of 144 kgs per acre was that 12% of the total plants with genetic impurity have failed to produce quality pods; therefore, it is not a matter whether expected yield from the crop was 15 to 16 quintals per acre, which the petitioner claims to be more than district average of 1196 kgs per acre, but a matter of 12% of the total yield loss.

Learned counsel for the petitioner strenuously contended that, firstly, the respondents have no authority, under the law, for fixing the liability as a compensation to be paid by the petitioner to the farmers. Secondly, assuming that there is some power under the law or under the agreement, the assessment of loss caused to the farmers was not properly made and the findings are contrary to the evidence on record and perverse in their nature.

Learned Government Pleader appearing for the respondents stated that the very Writ Petition is not maintainable. Here itself it may be necessary to notice the judgment reported in **ABL INTERNATIONAL LTD. v. EXPORT CREDIT GUARANTEE CORPN. OF INDIA LTD.**[1] wherein it was held that in an appropriate case, the writ Court is having jurisdiction to entertain the Writ Petition involving disputed questions of fact. The question of enforcement of contractual obligations of the State or its instrumentalities is no longer *res integra* and is settled by large number of decisions of the Apex Court. The power under Article 226 of the Constitution of India can be exercised by the High Court, if the State or its instrumentality acts in an arbitrary manner even in a matter of contract. In the instant case, there is no dispute that the parties herein have entered into a Memorandum of Understanding, which provides a mechanism for the evaluation of

the genetic impurity of the seeds and also an appeal for the aggrieved party to be filed before the State Level Committee. In view of the above, the argument of learned Government Pleader is noted, only to be rejected.

Learned Government Pleader further contended that it is a pure question of fact and no question of law involved to be examined under Article 226 of the Constitution. Once an agreement is entered into, it does not lie in the mouth of the petitioner to say that the respondents have no jurisdiction to fix the compensation and entertain the appeal filed by the petitioner.

Learned counsel for the petitioner drawn attention of the Court to material papers at page Nos.25 to 80 filed along with the Writ Petition, namely, Proformas for investigating complaints of genetic purity of all crop seeds (parts A & B) and the bills. He has drawn attention of the Court to item-4 of Part B, which deals with expected yield from the standing crop, against which it is noted as 15.2 quintals per acre (proforma relating to K.Nageswara Rao at page No.25). The normal yield of the crop at Mandal level/District Level (item No.6) was shown as 20.00 quintanls per acre; whereas, in some other proformas, the expected yield from the standing crop was shown as 15 quintals to17 quintals and 16 to 25% of crop loss is due to generic impurity. As stated above, the normal yield of the crop was noted as 20.00 quintals per acre in all the 19 cases.

In this regard, learned counsel for the petitioner stated that the petitioner has asserted at ground No.6 of the writ affidavit that though respondents 2 and 3 have based their conclusions about the less yield on a hypothesis that normally this crop should be 20 quintals per acre, whereas, as per the Plant Doctor Diary published, which contains Department's figures of yields per hectare district-wise, for Khammam

District, the average yield of Chilly is only 11.69 quintals per acre as evident from Part-B of the Proforma and as per the report of all the 19 complainants, the expected yield is in the range of 15 to 16 quintals per acre, which is much more than the average yield as per the figures published by the Government; therefore, the hypothesis of expected yield of 20 quintals per acre, which had made basis of the findings of respondents 2 and 3 is totally imaginary and unrealistic and based on that, the liability of compensation fixed against the petitioner is totally unsustainable. In reply to the above assertion, it is stated in the counter affidavit that as per clause 4(2) of MOU, the compensation shall be paid not less than the cost or difference in yield of the crop in question and that of normal yield of that particular crop or variety. In this case, compensation was awarded taking into account the average yield of district, but not the normal yield of 20 quintals per acre of Venkatapuram Mandal as claimed by the farmers. Further, the basis for arriving at the yield loss of 144 kgs per acre was that 12% of total plants with genetic impurity have failed to produce quality pods and, therefore, it is not a matter whether expected yield from the crop was 15 to 16 quintals per acre which the petitioner claims to be more than district average of 1196 kgs per acre, but a matter of 12% of total yield loss. Except this, the details as furnished by the petitioner, particularly the assertion that in Khammam district, the average yield of chilly is only 11.69 quintals per acre, but the yield expected was shown as 15 to 16 quintals in the above Proformas was not met with in the counter. Therefore, it must be deemed that the same were not taken into consideration.

Further, learned counsel for the petitioner states that as per the requirements of MOU, the Crop Expert/Scientist himself examined and certified as to the genetic impurity of the seeds. In this case, the

Scientist, who is an expert in pulses, was asked to examine and give a report. He cannot be said to be a proper authority on the chillies. Therefore, his report cannot be taken into consideration for the purpose of awarding the compensation. In this regard, learned Government Pleader submitted that for every district, there will be one Scientist for examining the genetic impurity of the seeds. There need not be a separate Scientist for examining the genetic impurity of each crop/seed. Genetic impurity can be examined by each and every Scientist in the field of Agriculture.

Be that as it may, I am of the opinion that the assertions made by the petitioner at ground No.6 of the writ affidavit were not met and only an evasive reply is given in the counter filed by the 2nd respondent. If in Khammam district, the average yield of chilly is only 11.69 quintals per acre, it cannot be said that the reports of the 19 complainants wherein the expected yield is mentioned as 15 to 16 quintals per acre, which is much more than the average yield as per the figures published by the Government are correct. Therefore, on this ground alone, the impugned Order of the 2nd respondent is liable to be set aside and is accordingly set aside. The matter is remanded to the 2nd respondent-appellate authority for reconsideration of the aspect as to the average yield of chilly in Khammam district and also the expected yield per acre and the actual yield obtained by the farmers and to decide the liability of the petitioner in this regard. The appeal shall be disposed of afresh, within a period of six (6) weeks from the date of receipt of a copy of this order, after putting the petitioner on notice and hearing it, in this regard.

Accordingly, the Writ Petition is allowed and the matter is remanded to the 2nd respondent. No order as to costs.

12-9-2006

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[1] 2004(3) SCC 553